

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social and Community Services Pay Equity Special Account Act 2012

Social and Community Services Pay Equity Special Account (Transition to National Disability Insurance Scheme) Specification 2017

Purpose

The *Social and Community Services Pay Equity Special Account (Transition to National Disability Insurance Scheme) Specification 2017 (the Specification)* is made under subsection 7(4) of the *Social and Community Services Pay Equity Special Account Act 2012 (the Act)*.

The Specification adds the National Disability Insurance Scheme as a program in Schedule 1 to the Act for the purpose of allowing the National Disability Insurance Agency to use funds standing to the credit of the special account established by the Act to assist organisations meet the costs of payments required to be made a result of a pay equity order.

Schedule 1 to the Act (together with Schedule 2) provides an exhaustive list of the Commonwealth programs that are within the scope of the Act. Schedule 3 provides a list of agreements and payments through which grants of financial assistance are made from the Commonwealth to the States and Territories.

The effect of this Specification is to redirect funding for the States and Territories under section 8 of the Act to funding for the National Disability Insurance Agency. The Commonwealth and the States have agreed through Bilateral Agreements that intergovernmental payments relating to disability services will cease once the National Disability Insurance Scheme is expected to reach full Scheme roll-out and that relevant payments would be made by the National Disability Insurance Agency under the National Disability Insurance Scheme. Funds standing to the credit of the account would be used by the National Disability Insurance Agency to support organisations affected by pay equity orders.

The Specification is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

The Act establishes the Account, which is a Special Account under section 83 of the *Public Governance, Performance and Accountability Act 2013*. The Account underpins the Commonwealth contribution to pay increases for social and community services sector workers in Commonwealth-funded programs. This extends to programs funded under agreements with and payments to States and Territories, such as National Partnership Payments and National Specific Purpose Payments.

Commonwealth supplementation is delivered through funding drawn down from the Account. The supplementation is then paid to assist employers:

- who are covered by a pay equity order or to whom a pay equity order applies; and
- who receive funding, directly or indirectly, from the Commonwealth for the purposes of a program, grant of financial assistance or specific purpose payment prescribed under the Act.

All of the programs within the scope of the Act, and therefore qualified to receive funds from the Account, are listed in Schedules 1 and 2 to the Act. Schedule 3 to the Act lists the grants of financial assistance or specific purpose payments for which specified amounts may be debited from the Account and credited to the COAG Reform Fund Account. Subsections 7(4) and 8(7) of the Act provide flexibility to ensure that the Schedules accurately reflect the programs, agreements and special purpose payments under which employers are able to receive assistance from the Act, and are therefore within the scope of the Act.

Commencement

Under subsections 7(5) and 8(8) of the Act, the Specification is not subject to the disallowance of instruments provisions set out in section 42 of the *Legislation Act 2003*. Instead, the Specification commences at the end of the disallowance period set out in section 9 of the Act. That is, on the day immediately after five sitting days has passed since the Specification is tabled in the House under section 38 of the *Legislation Act 2003*, and where no disallowance resolution referred to in subsection 9(2) of the Act has been passed.

Consultation

The Department of Social Services has had extensive consultations with the Departments of Treasury and Finance.

Regulation Impact Statement (RIS)

This proposal is a minor machinery change within Government and does not change compliance costs.

Explanation of the provisions

Section 1

Section 1 provides how the Specification is to be cited, that is, as the *Social and Community Services Pay Equity Special Account (Transition to National Disability Insurance Scheme) Specification 2017*.

Section 2

Section 2 provides that the Specification commences on the day immediately after the last day on which a resolution referred to in subsection 9(2) of the Act could have been passed.

Schedule 1

Schedule 1 sets out how the Specification modifies the Act.

Schedule 1, item 1

Item 1 modifies Part 2 of Schedule 1 to the Act by adding the National Disability Insurance Scheme, as established by the *National Disability Insurance Scheme Act 2013*, as a program. Adding this program to Schedule 1 will allow the National Disability Insurance Agency to use funds standing to the credit of the Account to assist organisations meet the costs of payments required to be made a result of a pay equity order.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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The Specification is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The Act provides Commonwealth service providers with supplementation funding to assist them in paying the higher wage costs associated with the implementation of the Fair Work Australia Equal Remuneration Order for the Social and Community Services Sector.

All of the programs, special purpose payments or agreements within the scope of the Act, and therefore qualified to receive funds from the Special Account established under the Act, are listed in Schedules to the Act. Subsections 7(4) and 8(7) of the Act allow those Schedules to be amended and provide flexibility to ensure that the Schedules accurately reflect the programs, agreements and special purpose payments under which employers are able to receive assistance from the Act.

The effect of this Specification is to redirect funding for the States and Territories under section 8 of the Act to funding for the National Disability Insurance Agency. The Commonwealth and the States have agreed through Bilateral Agreements that intergovernmental payments relating to disability services will cease once the National Disability Insurance Scheme is expected to reach full Scheme roll-out and that relevant payments would be made by the National Disability Insurance Agency under the National Disability Insurance Scheme. Funds standing to the credit of the account would be used by the National Disability Insurance Agency to support organisations affected by pay equity orders.

Human rights compatibility

This Specification is compatible with Article 7 of the International Covenant on Economic, Social and Cultural Rights which deals with the right to just and favourable conditions of work.

Christian Porter
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